A Plaintiff's Prior Complaint
Substantive and Formal Requirements

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Abstract: The requirements related to contend of a prior complaint consider, as case may be, the attribute of representing a requirement of punishment likelihood or of that of legal proceedings. The text of art. 283 Code of Criminal Procedure on the contends of prior complaint, states its elements which we intend to examine so that we may consider whether or not a prior complaint is properly filled in and what are the consequences of any irregularities. The legal efficacy of any prior complaint is therefore determined by its contends and this is why some of the elements specified below are provided under the penalty of being considered null and void, their deficiency thus attracting the legal inefficiency of the prior complaint, being considered a null document or, as some scholars may point out, as inexistent.

Keywords: plaintiff, prior complaint, punishment requirements, legal proceedings requirements

1. The requirements related to the contend of a prior complaint consider, as case may be, the attribute of representing a requirement of punishment likelihood or of that of legal proceedings[1]

The text of article 283 Code of Criminal Procedure on the contends of prior complaint, states its elements which we intend to examine so that we may consider whether or not a prior complaint is properly filled in and what are the consequences of any irregularities in this sense.

The legal efficacy of any prior complaint is therefore determined by its contends[2], and this is why some of the elements specified below are provided under the penalty of being considered null and void, their deficiency thus attracting the

[1] Giurgiu, N., *Drept penal general. Doctrină, legislaţie, jurisprudenţă*, Iasi, Ed. Sunser, 1997, p. 421.
[2] Lisnic, N., *Plângerea prealabilă. Condiţii de valabilitate*, R.D.P. no. 4/2004, p. 139.

legal inefficiency of the prior complaint, being considered a null document or, as some scholars may point out[1], as inexistent.

2. With regard to the requirement as legal proceedings, the main prerequisite of contents of any prior complaint relates to its expressing in a clear and undoubtedly manner, **both the will and the appeal of the plaintiff to file in a criminal complaint** against the defendant.

By its nature and purpose, the prior complaints must contain, above all, unlike declaration or simple complaint, the plaintiff's *declaration of will* with regard to the implementation of the prior complaint, meaning that the declaration states the will of the plaintiff for the criminal proceedings. Yet, there is no prerequisite for any particular statement, it is enough to deduct, if possible, that will[2], from the way the facts are being described or from the contents of the prior complaint itself.

One this prerequisite has been fulfilled; it is not important whether or not the plaintiff files in the complaint to the competent court as, according to art. 285 Code of Criminal Procedure., in case the complaint has been filed to the wrong court, it will be redirected ex officio to the competent body as is considered as valid if it was filed to the non-competent body in due time[3].

The requirement that contends of the complaints should include the expression "prior complaint", is not a prerequisite to formal validity. This manifestation of will has a special character and must result from a declaration that is by all means unequivocal.

The declaration taken by the police officer from the injured party, at the end of which there is the statement that it constitutes itself as a claimant in the criminal lawsuit, cannot be considered as a prior complaint as the criminal prosecutors are not legally informed in writing, thus not being able to pursue criminal prosecution, motivated by the fact that while the prior complaint constitutes in itself a requirement to validate criminal prosecution, the claimant has, in any criminal case, the character of a accessory, being thus subordinated to the criminal proceeding. This manifestation of will has a special character and must result from a declaration that is by all means unequivocal, and not from a declaration as a claimant[4].

As regards that the prior complaint must also include, among the elements provided by art. 283 Code of Criminal Procedure a declaration intended to condemn the defendant, this declaration differs from the application to indentify the culprit filed in to the criminal prosecutors. The request of the injured party to identify the culprit or the culprits is not equivalent to a prior complaint due to the fact the

[1] Neagu, I., *Tratat de procedură penală*, Bucharest, Editura Pro, 1997, p. 380-381.
[2] Pop, T., *Drept procesual penal*, Vol. II, Cluj, Tipografia Naţională, 1948, p. 30.
[3] A se vedea Antoniu, G., Bulai, C., Stănoiu, R. M., Filipaş, A., Mitrache, C., Papadopol, V., *Practica judiciară penală. Partea generală*, Vol. II, Bucharest, Ed. Academiei Române, 1990, p. 230-231.
[4] A se vedea Mrejeru, Theodor, Mrejeru, Bogdan, *Plângerea prealabilă. Urmărirea infractorilor minori. Doctrină şi jurisprudenţă*, Ed. Universitară 2008, p. 47-48.

investigator does not undergo a criminal action but only investigates in order to identify the culprit.

Only after having been communicated to the injured party, the latter will decide, now knowing the identity of the culprit, whether or not will file in a prior complaint.

In judiciary practice, it has been correctly decided, that the prior complaint is missing due to the fact that the injured parties have not requested the culprit to be condemned, but only to demolish the works carried put on common spaces and this is something that may be achieved through a separated civil lawsuit[1].

3. As regards the requirement of legal proceeding, the complaint must include the ***prerequisites provided by art. 283 Code of Criminal Procedure.*** (the description of the offense, the indication of the culprit, the means of evidence, indicating the address of the parties, the statement whether or not the injured party is a claimant; if case may be, the indication of the responsible party, from the point of view of a civil legal action).

The complaint filed in by the representative of a person without capacity of exercise, should include the age of the minor person, the situation of the person not having capacity of exercise as well as the quality of the representative on account of a document proving this quality.

From the contrastive analysis of contends of the complaint regulated by the provisions of art. 222 paragraph 2 Code of Criminal Procedure, with contends of the prior complaint, provided in art. 283 Code of Criminal Procedure, one may note that the law understood to also differentiate between the two institutions in point of their contends.

Thus, there are provided the special elements pertaining to prior complaint (the address of the parties and the witnesses, the statement the statement whether or not the injured party is a claimant; if case may be, the indication of the responsible party, from the point of view of a civil legal action), alongside with the common elements provided in art. 222 paragraph 2 Code of Criminal Procedure (the description of the offense, the indication of the culprit, and the means of evidence)[2].

What is more, it has to include other mentions than the simple complaint: the surname and first name as well as the residence of the injured part. The quality of injured party is not necessarily mentioned in the contends of the prior complaint as any prior complaint would presuppose, by itself, the declaration of the plaintiff as a party in the criminal lawsuit. Yet, there is the need to mention if the prior complaint was made through an attorney and the power of attorney needs to be attached to the

[1] Tribunalul Municipiului Bucharest, S.p., dec. no. 557/1996, *Culegere de practică judiciară a Tribunalului Bucharest pe anii 1994-1997,* p. 332.

[2] Dongoroz, V., Kahane, S., Antoniu, G., Bulai, C., Iliescu, N., Stănoiu, R., *Explicaţii teoretice ale Codului de procedură penală. Partea generală,* Vol. II. Bucharest, Editura Academiei RSR, 1976, p. 100.

file (art. 222 paragraph 3 Code of Criminal Procedure.)

The elements regarding the legal procedures provided in the contents of art. 283 Code of Criminal Procedure are essential and imply the requirement of validity of the prior complaint not only with regard to those without whom one may not take note of the manifestation of will that has to be expressed, namely those referring to the description of the criminal act as well as the offender[1]. For example, if one does not indicate the mean of evidence, the prior complaint will no longer be valid

What will always be essential is the *underwritin*[2]*g* (signing) of the compliant by the plaintiff, an act by means of which that person assumes the entire contents of the complaint.

The signature of the person filing the prior complaint, constitutes in itself an import element, which although not provided alongside with the other elements in art. 283 Code of Criminal Procedure, its necessity is derived from other legal provisions, i.e. art. 82 paragraph 1 and art. 112 point 6 Code of civil procedure that may also be applied in criminal cases.

In doctrine, it has been states that any complaint which is not signed does not have the value of a prior complaint and may be considered as a anonymous delation, thus not being able to be considered as having the value of the prior complaint. The lack of the signature of the plaintiff is equal to the lack of the prior complaint. In line with article 300 Code of Criminal Procedure, the court is compelled to check, ex officio, the legality of the complaint.

According to the provisions stated in article 82 paragraph 1 Code of Civil Procedure, for applications in general and art.112 point b Code of Civil Procedure, for summons, an essential prerequisite is to sign the petition by the party incurring it and the sanction provided in art. 133 Code of Civil Procedure, for not having signed it, is to declare the petition as null and void, with the mention that the lack of signature may encounter throughout the lawsuit. However, in what criminal complaints are concerned, there are two contrary provisions which state the prior complaint needs to be filed in within two months from having known the culprit, which results that the complaint may only be signed during this interval.

4. With regard to ***describing the offence*** there is no need to describe in detail all the circumstances it occurred; it is of foremost importance to determine the offence physically. Any prior complaint would refer to a .criminal act, or better said, a *tangible act*, and therefore it needs to be indicated and determined in contends of

[1] The judiciary practice considered the circumstance in which the injured party gives more declarations writing in detail the circumstances occurring between the parties, mentioning the aspects relating to the cutting down of trees and the fact that he or she is considered as a complainant, equals with a prior complaint referring to the crime of damage provided by art. 217 paragraph 2 Code of Criminal Procedure. – see C. Appeal Bucharest, criminal case decision no. 879/18 iunie 2001 in Court of Appeal Bucharest, Practică judiciară penală, Bucharest, Ed. Brilliance, 2004, p. 408.

[2] Manzini, V., *Tratato di dirrito processuale penale italiano*, IV, no. 373, p. 64, *apud* Pop, T., *Drept procesual penal*, Vol. II, Cluj, Tipografia Naţională, 1948, p. 31

the prior complaint. There is no need classify the offence from a legal point of view, and if it has already been classified, there is not need for it to be accurate. V. Manzini points out that the classification or the definition given by the injured party, if superfluous, may not have any legal consequence[1]. The prior complaint does not lose its validity and the prosecutor or the judge may always indicate a different crime to be investigated as a result of a prior complaint, than the one indicated in the complaint.

In case of plurality of offences, each of those shall be described separately.

The juridical literature[2] pointed out that exposing the committed offence, with all its circumstances that are of interest to the judiciary body, may be accomplished via a separate document, that is referred to in the contents of the prior complaint.

The body to which the prior complaint has been addressed will only be invested with regard to the facts referred to in the complaint even though the offence described in the complaint would concur other crimes, which in their turn would need to be investigated and tried; however, the complaint does not refer to these crimes. If, in reality the crime would differ from that indicated in the complaint, one should file in a different new complaint to have the crime investigated and tried[3].

If for the fact that is described in the complaint the law does not condition the commencement of the criminal prosecution by the existence of a prior complaint filed in by the plaintiff, the complaint will have the value of a simple complaint or of a delation and the judiciary body would consider that the case has been referred to in order to be pursued (previously to the amendments of art. 279 Code of Criminal Procedure, the court would send the complaint to be competent criminal prosecution body).

In case of association or indivisibility between a crime for which the beginning of the criminal prosecution is made as a result of the plaintiff's prior complaint and a crimes that may be prosecuted ex officio, if this disjunction is impossible, that the provisions of art.35 Code of Criminal Procedure. (art. 281 Code of Criminal Procedure) shall apply.

5. In the contents of the prior complaint, the plaintiff needs to indicate th***e culprit,*** meaning the persons against whom the complaint is being formulated. A culprit would be defined by the Criminal Code as the participant (art. 23 Code of Criminal Procedure – author, instigator or accomplice); there is no need for the plaintiff to indicate the quality of the culprit.

Due to that fact that this institution is exercised in *personam* and not *in rem*, for it to be materialized - for the culprit to be held liable - there is the need for it to

[1] Manzini, V., *Tratato di dirrito processuale penale italiano*, IV, no. 371, p.59, *apud* Pop, T., *op. cit.*, p. 30.
[2] Pop, T., *op. cit.*, p. 31.
[3] V. Manzini, *Tratato di dirrito processuale penale italiano*, IV, no. 371, p.60, *apud* Pop, T. *op. cit.*, p. 30. See also the provisions of art. 286 Code of Criminal Procedure related to changing the legal classification of the crime.

be concretely and not generically determined.

This does not mean that not knowing the culprit may constitute into an impediment for justice to be served, but only aims at bringing the matter to the judiciary bodies (criminal prosecutors) having regard to the fact that the activity of holding someone liable for a criminal act would always be circumscribed to a determined person.

Actually, previously to the amendment through the provisions of article 279 paragraph 2) point a) Code of Criminal Procedure., the law gave the injured party, in cases the crime was addressed to court through a prior complaint and the identity of the culprit was not known, to address the body of criminal prosecution so that the culprit may be identified[1].

In case of a crime with more active subjects, the term of introducing the prior complaint would run from the date the injured party became aware of the identity of one of the culprits. What is more, in case more persons took part in committing the crime, it is enough for the complaint to indicate only one of them and the complaint would extend its effect upon the others as well (art. 131 paragraph 3 Code of Criminal Procedure). The prior complaint would also extend its effect upon unknown persons, whose identification would be done subsequently by the criminal prosecutors. The wrong indication of the culprit's first name does not come as a reason to consider the prior complaint null and void, if, before the court of law, the culprit who has been served with a subpoena indicating his correct name, confirms that he is the person the prior complaint refers to[2].

Another solution from judiciary practice reveals that the petition filed in by the plaintiff to the police officers, that at a certain date, unknown persons entered his or her residence and injured his or her body integrity, may not be considered a prior complaint in the sense endowed by art. 279 Code of Criminal Procedure, as it does not contain the data provided by article 283 Code of Criminal Procedure[3].

6. With regard to indicating the means of evidence, if known or if in the possession of the plaintiff, these need to be pointed out or attached to the prior complaint (i.e. a forensic examination report, a technical and scientific report or any other document whose contents refers to the crime etc.)[4]. Indicating the mean of evidence is compulsory for the injured party in virtue of the principle deducted from art. 66 Code of Criminal Procedure according to which no one may be considered guilty until contrary evidence. This is why the plaintiff, in order to support the guilt of the culprit, needs to indicate within the contents of the prior complaint the means to evidence this guilt.

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[1] Art. 279 paragraph 2 Code of Criminal Procedure. was amended by art.I, point140 of Law no. 356/2006.

[2] T.S., criminal case decision no.276/1977, in R.R.D. no. 11/1977, p. 63.

[3] C. Appeal Bucharest, criminal case decision no.59/1996, in Court of Appeal Bucharest, *Practică judiciară penală*, Bucharest, Ed. Holding Reporter, 1998, p. 201.

[4] Apetrei, M., *Drept procesual penal*, Bucharest, Ed. Victor, 2004, p. 279.

According to article 64, the means of evidence by which one take not of the elements of fact and that my be used as evidence in a court of law are: the declarations of the culprit or the defendant, of the plaintiff, of the civil parties and of the parties liable from a civil point of view, the witnesses' declarations, the documents, the video or audio recordings, the forensic reports and the expert's reports.

If some of the complementary data from the contents of the prior complaint (i.e. indicating the address of the parties, of the witnesses, of the means of evidence) are not mentioned due to the fact that the injured party is not aware of them, they will be mentioned subsequently before the judiciary body the complaint was addressed to.

7. The prior complaint as an act of informing the competent body must be expressed through a procedural document, with both ***the contends and the form*** provided by the law.

From the group of the provisions included in article 283 Code of Criminal Procedure, results the fact that the prior complaint must be filed in *a written from.*

The prerequisite for the complaint to be filed in writing is the essence of the processual act it expresses, as it is a way of expressing and documenting the respective manifestation of will[1]. As a consequence, the written form of the complaint represents both a prerequisite for its existence and validity, but also for its being proven (*ad validitatem* and *ad probationem*).

Both the juridical literature[2] and practice[3] support the fact that the prior complaint may be filed in *verbally* when the injured person does not know how to write or sign his or her name, or when it is introduced in a court session, in compliance with the provisions of art. 286 Code of Criminal Procedure[4], when counter-signed in a minutes.

In the hypothesis the complaint was also formulated verbally, the provisions included in art. 222 paragraph 4 Code of Criminal Procedure on the complaint as a general way of informing the judiciary bodies, shall be applied. In such circumstances, the judiciary body receiving the complaint has the obligation to counter-sign it through a minutes, to give the injured party any necessary explanation and, if the case may be, to point out the missing data.

[1] Giurgiu, N., *Drept penal general. Doctrină, legislaţie, jurisprudenţă*, p. 422.
[2] Theodoru, Gr., *Drept procesual penal. Partea specială*, Iaşi, Ed. Cugetarea, 1998, p. 164.
[3] T.S., dec. pen 3748/1972 în Antoniu, G., Volonciu, N., Neagu, I., Stoica, V., Popescu, D., Papadopol, V., *Practică judiciară penală, Vol. IV, Procedură penală*, Bucharest, Ed. Academiei Române, p. 190.
[4] Acc to art. 286 Code of Criminal Procedure., amended by art. I point 145 of Law no. 356/2006 - „If from a cause into a cause, the criminal prosecuting acts have been done, one should subsequently consider to legally classify teh office which is necessary for any prior complaint, the criminal prosecuting body summons the injured party and ask whether or not he or she would file in a complaint. If not, teh body transmits the documents to the prosecutor so that the crime is investigated."

As regards the form the complaint is being filed in, the judiciary practice[1] decided that the document entitled as "declaration" written by the police officer and signed by the injured party has the value of a prior complaint, as long as its contends describes the way the crime was committed, the culprit is referred to and there is the request to hold the culprit liable for his or her crime. In this sense the processual law does not demand as a requirement for the validity of the prior complaint, the existence of a separate written document stating the will of the injured person to commence the criminal prosecution action in cases of crimes pursued as a consequence of a prior complaint, this may also be manifested in the contends of the declaration filed in to the criminal prosecuting bodies. The essential point is that the plaintiff has mentioned in the declaration all the necessary data and has declared his or her will that the culprit is held liable for his or her crime[2].

Having regard to all the substantive and formal requirements that need to be fulfilled by the prior complaint, it has been pointed out that a complaint that is not compliant with these requirements may be replaced, within the deadline, with another one that is complaint[3].

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[1] Court of Appeal Bucharest, s.a II-a pen., dec. no. 81/1999, in C XIV, p. 134-135.
[2] Mrejeru, Theodor, Mrejeru, Bogdan, *op. cit.*, p. 47.
[3] V. Manzini, *Tratato di dirrito processuale penale italiano*, IV, no. 373, p.67, *apud* T.Pop, *Drept procesual penal*, Vol. II, Tipografia Naţională, Cluj, 1948, p. 31.